

STATE OF SOUTH DAKOTA     )  
                                      ):SS  
COUNTY OF LAKE            )

IN CIRCUIT COURT  
  
THIRD JUDICIAL CIRCUIT

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STATE OF SOUTH DAKOTA,

CR. 16-93

Plaintiff,

vs.

MOTION TO RETURN PROPERTY  
PURSUANT TO SDCL 23A-37

JOSEPH SCHMITZ,

Defendant.

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COMES NOW, the State of South Dakota, through Lake County State's Attorney Manny de Castro, and hereby moves this Honorable Court for its Order, pursuant to SDCL 23A-37, allowing the State to return the house located at 6233 North Lakeside Drive, Madison, South Dakota to its lawful owner Michael S. Verley. This Motion is based upon the following:

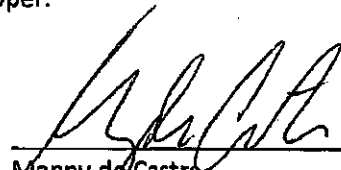
1. Pursuant to SDCL 23A-37-8 the court shall release all property to its rightful owner if:
  - (1) The owner is not prohibited by law from possessing such property;
  - (2) The property is not needed as evidence in any judicial proceeding;
  - (3) Satisfactory arrangements have been made to return such property to the court if subsequently needed as evidence.

Certainly, Mr. Verley is allowed under the law to possess the house in question. The State does not need the property as evidence in its case as the property has been photographed by the State and video footage has been taken by the defense and pursuant to SDCL 23A-37-14 the photographs and video are admissible as evidence. If released, Mr. Verley has agreed to not make any changes to the property and is open to any requests by law enforcement, the State, or the Court to have any experts view the property or the jury walk through the property, if needed. See Attached Affidavit of Michael Verley.

2. The State considers this notice to the defendant, pursuant to SDCL 23A-37-15, that the property will be returned to its owner. Further, the State does not believe the property contains any exculpatory evidence of the defendant's innocence.

WHEREFORE, the State respectfully requests that this Motion be granted in full and for any other and further relief as the Court deems just and proper.

Dated this 17<sup>th</sup> day of February, 2017.

  
\_\_\_\_\_  
Manny de Castro  
Lake County State's Attorney  
200 E. Center  
Madison, SD 57042  
(605) 256-7630

CERTIFICATE OF SERVICE

This will certify that on the 17<sup>th</sup> day of February, 2017, the within and foregoing Motion to Return Property Pursuant to SDCL 23A-37, was served upon Donald M. McCarty & Michael Butler, Attorneys for the Defendant, through Odyssey E-File & Serve.

  
\_\_\_\_\_  
Manuel J. de Castro, Jr.  
Lake County State's Attorney

IN CIRCUIT COURT.  
THIRD JUDICIAL CIRCUIT

**STATE OF SOUTH DAKOTA,**

Plaintiff,  
vs.

**AFFIDAVIT OF MICHAEL S. VERLEY IN  
SUPPORT OF  
MOTION TO RELEASE PROPERTY**

**JOSEPH MICHAEL SCHMITZ,**

**Defendant.**

STATE OF SOUTH DAKOTA )  
COUNTY OF MINNEHAHA ) SS:

**Affiant, being duly sworn, states as follows:**

- 1) My name is Michael Verley, and I own 6233 N. Lakeside Dr., located in Lake County, South Dakota.
- 2) The above-named Defendant, Joseph Michael Schmitz, was my tenant and living at 6233 N. Lakeside Drive in April, 2016 when he was arrested for the death of his finance, Corina Booth.
- 3) This property has been sealed at the direction of law enforcement since April 27, 2016.
- 4) From this arrest and continued securing of the property, I have lost rental income and lost the ability to use the home as equity, causing me financial harm, resulting in me being a victim of this alleged crime under S.D.Const. art. VI, §29.
- 5) While my victim rights shall be afforded at the time of victimization, I formally request all victims' rights be afforded to me pursuant to South Dakota Attorney General Opinion No. 16-02.
- 6) I understand a hearing is being held on this case on March 2, 2017. I understand the State will making a Motion to Release this property. I ask for the Court to take this Affidavit into consideration in support of the State's Motion to Release property pursuant to S.D.C.L. 23A-37-8.
- 7) I have cooperated fully with law enforcement to aid the criminal justice system by continually providing law enforcement and defense counsel access to the property to the best of my ability. While the property is secured, I have only been able to use the utility room, the outside grounds and the detached garage.

**Affidavit of Michael Votky**

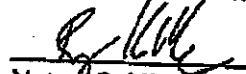
- 8) I have not been able to use the property as intended which resulted in a collective temporary taking by the City of Madison, Lake County, and the State of South Dakota in violation of my property and victim's rights granted by the United States and South Dakota Constitutions.
- 9) Defendant Schmitz and I had an oral agreement where Defendant was going to rent 6233 N. Lakeside Dr., from May 1, 2016 through May 1, 2017 for \$30,000. We came to this agreement in April of 2016.
- 10) Defendant Schmitz never paid the agreed upon amount of rent after his arrest.
- 11) A portion of this lost rental income has been covered by my insurance company, though this insurance coverage will end on April 27, 2017 (one year after the arrest). After April 27, 2017, the property can neither be used as intended by me nor rented in any manner should this property remain secured by law enforcement without any income in any manner.
- 12) While this property has remained sealed I have not been able to use the property as equity in other potential transactions, losing out of other investment opportunities.
- 13) Should the property remain sealed after April 27, 2016, I will be expected to pay full property taxes on the property with only limited use available to me.
- 14) From discussions with my insurance company, it is my understanding that the residence could be considered "abandoned" and unable to be insured if it remains secured. If considered abandoned then vandalism or water breaks (which occurred in December of 2016) are not covered by insurance. No other insurance is available, and the City of Madison, Lake County nor the State of South Dakota has not indicated they would cover any losses normally covered by insurance should this property remain sealed.
- 15) Should this property be unsealed and pursuant to S.D.C.L. 23A-37-8(3), I will not sell or transfer any rights to this property to any other person, and will continue to cooperate with law enforcement and the Court should law enforcement or the Court desire access to the property for any reason.
- 16) Should this property be unsealed and pursuant to S.D.C.L. 23A-37-8(3), I promise to not make any structural changes to the residence. I will not change the inside of the residence in any manner which would cause the residence to be different than it was on the date of the incident, provided the case proceed in a reasonable time frame in accordance with S.D.Const. art. VI, §29, cl. 15.
- 17) The residence contains belongings to both the Defendant and victim.
- 18) It is my understanding that the family of Corinna Booth desire the victim's belongings and family photos be returned to them.
- 19) Should the property be unsealed, I would like to be able to use the property for my own use. Pursuant to S.D.Const. art. VI, §29, cl. 13, I would seek permission to have any property that does not belong to me disposed of pursuant to the South Dakota Codified

laws governing the disposal of the renter's property.

Dated this 16<sup>th</sup> day of February, 2017.

  
Michael Verley

Subscribed and sworn to before me this 16<sup>th</sup> day of February, 2017.

  
Notary Public, South Dakota  
My Commission Expires:  
7/7/18

